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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 1019

LESTER WEBSTER; CARL BRUTSCHE; HARRY FAIRBANKS; CARL J. WILLIAMS; HAROLD E. MOON; ELISHA NUTTER; JOHN G. LACKEY; KENNETH A. SCOTT; EUGENE BILLIET; LEONARD JOHNSON; DONALD STOCKS and DONALD SHOPP, *Petitioners,*

vs.

MIDLAND ELECTRIC COAL CORPORATION, a Corporation; MARTHA TERLEKE, ACTING SECRETARY OF THE ILLINOIS COAL OPERATORS ASSOCIATION; THOMAS KENNEDY AS PRESIDENT OF THE INTERNATIONAL UNION UNITED MINE WORKERS OF AMERICA; JOHN OWENS AS SECRETARY-TREASURER OF THE INTERNATIONAL UNION UNITED MINE WORKERS OF AMERICA; HUGH WHITE AS PRESIDENT OF DISTRICT 12 UNITED MINE WORKERS OF AMERICA; WILLIAM SEARS AS PRESIDENT OF LOCAL UNION 1904 UNITED MINE WORKERS OF AMERICA; and THOMAS NOWERS AS SECRETARY OF LOCAL UNION 1904, UNITED MINE WORKERS OF AMERICA, *Respondents.*

ON PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, SECOND DISTRICT.

BRIEF OF MIDLAND ELECTRIC COAL CORPORATION, A CORPORATION, AND MARTHA TERLEKE, ACTING SECRETARY OF THE ILLINOIS COAL OPERATORS ASSOCIATION, IN OPPOSITION.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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OPINION BELOW.

The opinion of the Appellate Court (an intermediate Appellate Court in Illinois) (Pet. App. A) is reported at 43 Ill. App. 2d 359, 193 N. E. 2d 212.

JURISDICTION.

The judgment of the Appellate Court (Pet. App. C) was entered on October 14, 1963. A petition for leave to appeal to the Supreme Court of Illinois was denied by that Court on January 21, 1964 (Pet. App. B). The jurisdiction of this Court is invoked under 28 U. S. C. 1257(3).

QUESTIONS PRESENTED.

It is the position of these Respondents that the "Questions Presented" by the petition do not accurately or fairly represent questions, if any, presented to this Court by the decision of the Appellate Court of Illinois, Second District, in affirming the dismissal of Petitioners' Second Amended Complaint. The first "question", with respect to preemption from jurisdiction by the National Labor Relations Board, is discussed under "Reasons for Denial of the Writ", I, Page 7 *supra*.

The second "question" presupposes the unlikely event, that the employer and the Union acted in concert. This was not alleged in any pleading. To the contrary, in the original complaint (R. 6), plaintiffs charged that certain union officials, acting individually and as officers of their respective organizations, "obstructed, prevented and influenced the Midland Electric Coal Corporation".

The third and principal question raised by the opinion below might properly be stated: "May employees, whose rights are derived from a collective bargaining agreement which provides exclusive grievance procedures, abandon

those procedures and resort to an action in court when they are dissatisfied with the result of such procedures?"

THE FEDERAL STATUTES INVOLVED.

Under this heading petitioners stated that the statutory provisions involved are Sections 7 and 8 of the National Labor Relations Act, as amended, 29 U. S. C. Sections 157-158; and Section 301 of the Labor Management Relations Act, 29 U. S. C. Section 185.(*)

STATEMENT.

The petitioners, members of the International Union, United Mine Workers of America, and employees of Midland Electric Coal Corporation, designated the International Union and its divisions, known as District 12 and Local 1904, as their sole and exclusive bargaining agent (R. 64). By its Constitution, the International Union was authorized to settle and finally determine any grievances of its members (R. 23).

The terms and conditions of petitioners' employment were governed by a collective bargaining agreement known as The National Bituminous Coal Wage Agreement of 1950, as amended from time to time (hereinafter referred to as the National Agreement), negotiated on their behalf by the International Union, and by various district and local agreements to the extent that such agreements were consistent with the National Agreement. Prior to December 16, 1959 petitioners' seniority rights were governed by the simple local agreement "that the last man hired be the first man laid off and so on according to mine payroll seniority" (R. 4). This permitted the practice known as "bumpback" whereby an employee laid

(*) The statutory provisions referred to are not set out either in the petition or the appendix thereto as required by Rule 23(d).

off was permitted to take the job of any other employee having less payroll seniority, for which the employee laid off was qualified.

By an agreement entered into by District 12, United Mine Workers of America, and Illinois Coal Operators Association, approved by the International Union, United Mine Workers of America, effective December 16, 1959 (R. 62), all local seniority agreements including the agreement aforesaid were abolished and thereafter the seniority provisions of the National Agreement (R. 176) determined the seniority rights of the plaintiffs and they could no longer enjoy the right of bumpback permitted under the cancelled local agreement.

These changes, a statement of the reasons therefor and an agreed interpretation thereof (Pet. 3—note) were communicated to Local 1904 by the President of District 12 on December 14, 1959 (R. 61).

On February 25, 1960 petitioners were laid off because of a reduction in the working force (Pet. App. 3a). They protested their lay-offs to their employer, claiming that they were still entitled to bumpback employees in other classifications, having less mine payroll seniority. This claim was denied by the employer and steps were taken by the petitioners (Pet. 14—note) under the grievance procedures of the agreement.

It was the intent of the National Agreement that all disputes would be settled under the machinery provided by the contract and by collective bargaining. It was provided (R. 25), as follows:

"MISCELLANEOUS.

"3. The United Mine Workers of America and the Operators agree and affirm that they will maintain the integrity of this contract and that all disputes and claims which are not settled by agreement shall be settled by the machinery provided in the 'Settlement of Local and District Disputes' section of this Agreement unless national in character in which event the parties shall settle such disputes by free collective bargaining as heretofore practiced in the industry, it being the purpose of this provision to provide for the settlement of all such disputes and claims through the machinery in this contract provided and by collective bargaining without recourse to the courts."

The National Agreement (Pet. 13) and the last Illinois District Agreement (R. 254) (in full force and effect except where amended, modified and or nullified by the National Agreement) contain detailed provisions with respect to the handling of grievances. Neither the National Agreement nor the Illinois District Agreement require the taking of the successive steps therein specified unless there is disagreement between those charged with adjusting the dispute. In other words, as stated in the National Agreement (Pet. 13), "A decision reached at any stage of the proceedings aboye outlined shall be binding on both parties hereto and shall not be subject to reopening by any other party or branch of either association except by mutual agreement."

In anticipation of the problems arising as the result of the change in the seniority provisions it was particularly provided in the Memorandum of District 12 Agreement (R. 62) that any and all grievances which may arise after December 16, 1959 would be settled under the grievance machinery as provided for in the District Agreement, and in line with the National Seniority Clause.

When presented with the complaint in accordance with the prescribed grievance procedures, Midland, the International Union, District 12 and Local 1904 all took the position that plaintiffs' lay-offs were consistent with the existing seniority regulations under the National Agreement (Pet. App. 11a).

Petitioners though aggrieved by the Union officials' acquiescence to the stand taken by Midland, did not follow the procedures provided by the Constitution of the United Mine Workers of America but filed suit against Midland, Illinois Coal Operators Association, the Union and certain officials thereof. Contrary to statements in the petition (Pet. 4) petitioners did not, in their Second Amended Complaint, charge the Union defendants with allegedly influencing, inducing or causing the employer to breach the seniority provisions of the agreement. As stated in the Appellate Court decision (Pet. App. 11a) petitioners' complaint against the Union defendants was that the Union refused to process their complaints against Midland.

Petitioners state (Pet. 4) that although entitled an action for a "Declaratory Judgment", that the gist of the action is for equitable relief. This is not so. The equitable grounds had appeared in Count V of the Second Amended Complaint and this count was stricken on Plaintiffs' own motion, leaving only claims for compensatory and punitive damages.

REASONS FOR DENIAL OF THE WRIT

It Is the Position of These Respondents That the Petition Should Be Denied for Both Jurisdictional and Substantive Reasons.

I. Jurisdictional Grounds.

1. While jurisdiction of this Court was invoked under Section 28 U. S. C. 1257(3) and claimed to be involved are Sections 7 and 8 of the National Labor Relations Act, as amended, 29 U. S. C. Sections 157-158; and Section 301 of the Labor Management Relations Act, 29 U. S. C., Section 185, no Federal question was in fact raised by the Court's decision.

Under the heading "Questions Presented" petitioners ask "Are State Courts preempted from jurisdiction by the National Labor Relations Board in considering a suit brought by 12 coal miners to enforce claimed seniority rights under a collective bargaining agreement?". This question was not raised by the opinion of the Appellate Court.

After holding that the plaintiffs had failed to exhaust their remedies under both the National Bituminous Coal Wage Agreement and the Constitution of the United Mine Workers of America, the Appellate Court, in passing, and limiting its application to the Union Defendants only, commented on recent expressions of this Court in relation to preemption of Court jurisdiction by the National Labor Relations Board in matters involving individual members' employment (Pet. App. 12a). This reference by the Appellate Court was dicta and clearly did not form a part of the decision of the Court. The absence of an affirmative showing that the State court decided a Federal question and that such decision was necessary to the determination

of the cause requires this Court to refuse to review the judgment below. *Durley* v. *Mayo*, 351 U. S. 277.

2. Admitting, in arguendo, that a Federal question was raised in the opinion of the Appellate Court, it appears that adequate independent non-Federal grounds for the decision sought to be reviewed appear in said opinion and that, for this additional reason the writ should not be granted. This Court has frequently held that it will not grant a Writ of Certiorari when adequate independent non-Federal grounds for the decision sought to be reviewed appear in the opinion below. *Fox Film Corp.* v. *Muller*, 296 U. S. 207; *Eustis* v. *Bolles*, 150 U. S. 361. This rule was recently reiterated in the case of *Fay* v. *Noia*, 372 U. S. 391, where it is stated:

> "It is a familiar principle that this Court will decline to review state court judgments which rest on independent and adequate state grounds, notwithstanding the copresence of federal grounds. See, *e.g.*, *NAACP* v. *Alabama*, 357 U. S. 449, 2 L. ed. 2d 1488, 78 S. Ct. 1163; *Fox Film Corp.* v. *Muller*, 296 U. S. 207, 80 L. ed. 158, 56 S. Ct. 183. Section 25 of the Judiciary Act of 1789, c. 20, 1 Stat. 85-87, denied this Court power to base the reversal of a state court decision on any error other 'than such as . . . immediately respects . . . questions of validity or construction of the said (Federal) constitution, treaties, statutes, commissions, or authorities in dispute.' The deletion of the express restriction by the Judiciary Act of February 5, 1867, c. 28 § 2, 14 Stat. 386-387, did not enlarge this Court's power in that regard. *Murdock* v. *Memphis* (U. S.), 20 Wall. 590, 22 L. ed. 429. *Murdock* was a case involving state substantive grounds, but the principle is also applicable in cases involving procedural grounds."

It is only necessary that the State ground have fair support and the Court is not at liberty to inquire whether the ruling of the State court is right or wrong if it is not without such support. The claim that the Illinois Court's

interpretation of the exhaustion rule deprived the plaintiffs of due process does not enable this Court to review the decisions of the State court upon questions of State Law. *Enterprise Irrigation District* v. *Farmers Mutual Canal Co.*, 243 U. S. 157.

The Appellate Court of Illinois found that it was readily apparent from an examination of the record that the plaintiffs had failed to exhaust their remedies under both the National Agreement and the Constitution of the United Mine Workers of America and accordingly could not bring an action in court (Pet. App. 10a). This was an application of Illinois law, *Transcontinental & Western Air, Inc.* v. *Koppal*, 345 U. S. 653; *Payne* v. *Pullman Co.*, 13 Ill. App. 2d 105; *Anson* v. *Hiram Walker & Sons*, 222 F. 2d 100 (CCA—7th, 1955); *Long* v. *Illinois Central R. R. Co.*, 32 Ill. App. 2d 103; well established and recognized by the Appellate Court (Pet. App. 10a) and by the plaintiffs, as such (Pet. 12). Clearly the opinion of the Appellate Court was based upon an independent and adequate state ground and this Court should decline to review the state court judgment.

II. Substantive Grounds.

Only a brief reference will be made by these respondents to the substantive grounds for denying the Writ.

1. The preemption doctrine argued at length by petitioners was not the subject of the decision by the Appellate Court of Illinois. The Court referred to that doctrine only briefly and then only in relation to the union defendants (Pet. App. 12a).

2. Petitioners are claiming seniority rights under and by virtue of a collective bargaining agreement, negotiated on their behalf by the union and they are bound by its terms. *Anson* v. *Hiram Walker & Sons*, 222 F. 2d 100. When, by reason of a reduction of the working force, pe-

titioners were laid off, they protested the application of the terms of the National Agreement and claimed the right of bumpback. When grievance procedures produced an unfavorable result, the Union agreeing that the Company acted in accordance with the Agreement, the petitioners abandoned further efforts for settlement under the Contract and their Union Constitution and brought suit. This petitioners are not permitted to do. *United Steelworkers* v. *American Mfg. Co.*, 363 U. S. 564; *United Steelworkers* v. *Warrior & Gulf Nav. Co.*, 363 U. S. 574; *Ostrofsky* v. *United Steelworkers of America*, 171 F. Supp. 782.

3. Petitioners have failed to show special or important reasons (other than those personal to petitioners) for the allowance of their petition, or that the case involves questions of public interest that have not already been resolved fully by this Court.

CONCLUSION.

For the reasons stated it is respectfully submitted that the petition for a Writ of Certiorari should be denied.

May, 1964.

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